

CHAPTER 54-02-07 DISCIPLINARY ACTION

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54-02-07-01. Definition of unprofessional conduct. Repealed effective August 1, 1988.

54-02-07-01.1. Grounds for discipline. Practice inconsistent with acceptable standards of nursing practice by a licensee, applicant, or registrant means behavior that may place a client or other person at risk for harm or be in violation of the standards of nursing practice. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior, or other behavior that demonstrates professional misconduct and includes the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, or color.
2. Cause or permit verbal, physical, emotional, or sexual abuse or harassment or intimidation to a client, client's family, or other health care provider.
3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.
4. Failure to appropriately supervise persons to whom nursing interventions have been assigned or delegated.

5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.
6. Performance of nursing interventions in a manner inconsistent with acceptable nursing standards.
7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of board records or client, employee, or employer records.
8. Failure to adhere to the licensee's, registrant's, or applicant's professional code of ethics or other applicable standards governing the individual's practice.
9. Misappropriation of property, including any real or personal property of the client, employer, or any other person or entity or failure to take precautions to prevent such misappropriation.
10. Abandon or neglect a client who is in need of or receiving nursing care.
11. Failure to comply with mandatory requirements to report any violation of the Nurse Practices Act or duly promulgated rules, regulations, or orders of the board.
12. Practice nursing or assist in the practice of nursing while under the influence of alcohol or unauthorized drugs or while exhibiting impaired behavior.
13. Alter or falsify a license, registration, transcript, diploma, certificate, program of study, or continuing education document.
14. Use or permit the use of a nursing license or registration that has been fraudulently purchased, created, obtained, issued, counterfeited, or altered.
15. Failure to submit to a mental health, chemical dependency, or physical evaluation within the timeframe required by the board.
16. Violate any term of probation, condition, or limitation imposed by the board.
17. Failure to adhere to professional boundaries with a client or client's family.

18. Failure to comply with licensure or registration requirements.

History: Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998; June 1, 2002; April 1, 2004.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-02. Definitions. Repealed effective June 1, 2002.

54-02-07-03. Complaints. Repealed effective December 1, 1995.

54-02-07-03.1. Reporting violations. Protection of the public is enhanced by reporting of incidents that may be violations of North Dakota statutes or grounds for discipline by the board. Licensees, registrants, applicants, or citizens should use the following process to report any knowledge of the performance by others of acts or omissions that violate North Dakota Century Code chapter 43-12.1 or these rules:

1. **Minor incident.** If the act or omission meets the criteria for management of a minor incident, the applicant, licensee, or registrant should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's or registrant's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.
 - a. A minor incident may be handled in the practice setting with a corrective action process if all the following factors exist:
 - (1) Potential risk of harm to others is low;
 - (2) There is no pattern of recurrence;
 - (3) The licensee or registrant exhibits evidence of remediation and adherence to standards of nursing practice; and
 - (4) The corrective action process results in the licensee or registrant possessing the knowledge, skills, and abilities to practice nursing safely.
 - b. Other factors may be considered in determining the need to report such as the significance of the event in the particular practice setting, the situation in which the event occurred, and the presence of contributing or mitigating circumstances in the nursing care delivery system.
 - c. Nothing in this rule is intended to prevent reporting of a minor incident or potential violation directly to the board.

2. **Major incident.** If the act or omission is a major incident or factors are present that indicate a duty to report, the licensee, applicant, or registrant and the licensee's, applicant's, or registrant's supervisor must contact the board office. The report should include requested information about the act or omission, the individuals involved, and the action taken within the practice setting.
3. **Termination of employment.** When a licensee, applicant, or registrant terminates from the practice setting, either voluntarily or by request, due to conduct that may be grounds for discipline under the Nurse Practices Act, a report shall be made to the board by the licensee, applicant, or registrant and by the licensee's, applicant's, or registrant's supervisor.

History: Effective December 1, 1995; amended effective June 1, 2002; April 1, 2004.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-11

54-02-07-04. Investigation. Complaints, requests for investigation, and reports of acts or omissions that are in violation of North Dakota Century Code chapter 43-12.1 or are grounds for disciplinary action will be investigated by the board or by its direction in order to determine whether sufficient grounds exist to file a complaint according to North Dakota Century Code chapter 28-32.

History: Effective August 1, 1988; amended effective December 1, 1995.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-13

54-02-07-04.1. Evidence and evaluation of treatment. The board may require the individual subject to an investigation to submit to a mental health, chemical dependency, or physical evaluation if, during the course of the investigation, there is reasonable cause to believe that any licensee, registrant, or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs.

1. Upon failure of the person to submit to the evaluation within thirty days of the request, the board may temporarily suspend the individual's license or registration or deny or suspend consideration of any pending application until the person submits to the required evaluation.
2. The licensee, registrant, or applicant shall bear the cost of any mental health, chemical dependency, or physical evaluation and treatment required by the board.

History: Effective June 1, 2002.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-05. Settlements. Repealed effective December 1, 1995.

54-02-07-05.1. Disposition. Requests for investigation may result in:

1. Informal resolution and disposition by the board;
2. Formal resolution and disposition by the board. The board may use an administrative law judge to preside over the entire administrative proceeding and prepare recommended findings of fact, conclusions of law, and recommended order for board consideration, or the board may use a procedural hearing officer for the conduct of the hearing at which a majority of board members must be present at the hearing;
3. Dismissal;
4. Referral to another agency; or
5. Other action as directed by the board.

If the board determines after investigation that the facts alleged in a potential violation report are without merit, the board may expunge the report and the investigative file from the record of the licensee or registrant.

History: Effective December 1, 1995; amended effective June 1, 2002.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-05.2. Temporary suspension. The executive director or the executive director's authorized designee may determine that temporary suspension of a license or registration is necessary when continued practice of the licensee or registrant would constitute a continuing and imminent threat to the public welfare.

1. When it appears by credible evidence that temporary suspension may be necessary, the executive director or the executive director's authorized designee may issue an order temporarily suspending the license or registration, specifying the statute or rule.
2. The order of temporary suspension shall take effect upon written notice to the licensee or registrant and shall remain in effect until either retracted, modified, or superseded by final disciplinary action by the board or upon agreement between the board and the licensee or registrant.
3. In cases when disciplinary action is imposed, the board may additionally order that the temporary suspension continue in effect until the later of

expiration of the time permitted for appeal or termination of the appellate process.

History: Effective June 1, 2002.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-05.3. Voluntary surrender. The board may accept the return and surrender of a license or registration without formal charges, notice, or opportunity of hearing if the licensee or registrant voluntarily surrenders the license or registration to the board and executes a statement that the individual does not desire to be licensed or registered.

An individual who is under investigation for violation of North Dakota Century Code chapter 43-12.1 may voluntarily surrender a license or registration to the board. Any license or registration surrender shall be deemed to be an admission of the alleged facts of any pending investigation or disciplinary matter.

1. A voluntary surrender deactivates the license or registration at the time of its relinquishment.
2. The voluntary surrender of a license or registration is disciplinary action and shall be reported and processed in the same manner as final disciplinary actions of the board.
3. Surrender of a license or registration shall not preclude the board from investigating or completing a disciplinary proceeding.
4. Individuals who surrender their licenses or registrations are not eligible to seek reinstatement of their license or registration for a minimum of two years and shall comply with the requirements for reinstatement of license or registration.

History: Effective June 1, 2002.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-06. Board decision. The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice or to reinstate a license or registration will be communicated to the licensee or registrant in the form of a board order. In addition to the terms and conditions imposed by the board, the following may apply:

1. **Revocation.** If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reapplication for licensure or registration by the individual. The national nursing licensing examination may be waived by the board as a condition for

the reissuance of a previously revoked license. The initial licensure or registration fee will be assessed for the reissuance of a revoked license or registration.

2. **Suspension.** If the board issues a suspension order, it may also indicate the specific action necessary for the reissuance of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current renewal fee will be required for reissuance of a suspended license or registration.
3. **Encumbrance.** If the board issues an encumbrance order:
 - a. The licensee or registrant shall promptly surrender all current licenses and registrations.
 - b. An encumbered license or registration shall be issued with the following statement "License or registration is encumbered. Please contact the board of nursing."
 - c. If a licensee or registrant has more than one license or registration, the encumbrance applies to all licenses or registrations.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-13, 43-12.1-14

54-02-07-07. Fees.

1. Costs and disbursements, including witness fees and reimbursement of the board's expenses in any administrative hearing or other proceeding, may be recovered from the licensee, applicant, or registrant following any disciplinary action.
2. Penalty fees for each separate violation as established by the board may be imposed against the licensee, applicant, or registrant following any disciplinary action. Administrative fees may be imposed by the board against the licensee, applicant, or registrant following the issuance of nondisciplinary action.
3. If a witness is subpoenaed by the board to appear at the request of the licensee or registrant, the licensee or registrant is to deposit with the board sufficient funds to cover expenses for mileage, food, lodging, and witness fees as allowed by state reimbursement policies.
4. In the case of any request by the licensee, applicant, or registrant for the subpoena by the board of an expert witness, sufficient funds will also

be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee, applicant, or registrant must be made in writing.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-26, 43-12.1-13

54-02-07-08. Application for reinstatement. Any person whose license or registration has been suspended or revoked by the board or voluntarily surrendered shall submit a written application for reinstatement in the manner and form required by the board at the conclusion of the time period specified in the order. The burden of proof is on the licensee or registrant to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability or registrant's ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement, or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-09. Practice without a license or registration. An individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be assessed the following:

1. Nondisciplinary action.

- a. A person who has duly applied for licensure or registration and whose license or registration has been expired for thirty calendar days or less and who has been practicing nursing or assisting in the practice of nursing may be issued a license or registration by paying to the board the required late licensure or registration fee and administrative fee as established by the board and complying with any other requirements of the board.
- b. Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.

2. Disciplinary action.

- a. A person who has duly applied for licensure or registration and whose license or registration has been expired for more than thirty calendar days and who has been practicing nursing or assisting in the practice of nursing may be issued a license or registration by paying to the board the required late licensure or registration fee, penalty fee, duly complying with the imposition of any disciplinary sanction established by the board and complying with any other requirements of the board.
- b. A person who has not duly applied for licensure or registration and who has been practicing nursing or assisting in the practice of nursing without a current license or registration may be issued a license or registration by paying to the board the required late licensure or registration fee and penalty fee, duly complying with the imposition of any disciplinary sanction established by the board, and complying with any other requirements of the board.
- c. Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.
- d. Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within five years after the imposition of the board's order.

History: Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995; June 1, 2002; April 1, 2004.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-10. Nurse assistant without registry status. Repealed effective February 1, 1998.

54-02-07-11. Applicant statement. If an applicant for initial or renewal of licensure or registry status reports an arrest, charge, or prior conviction of a crime other than a minor traffic violation, the applicant must provide the necessary information to determine the bearing upon that person's ability to serve as a licensed nurse or an unlicensed assistive person. Upon receipt of evidence of sufficient rehabilitation as outlined in North Dakota Century Code section 12.1-33-02.1, the license or registration may be issued. If the information does not substantiate the rehabilitation, the applicant may ask for a hearing pursuant to North Dakota Century Code chapter 28-32.

History: Effective December 1, 1995; amended effective June 1, 2002.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-12. Unlicensed assistive persons on board-recognized registries. Individuals listed on a board-recognized registry must be considered to be on the board's registry for purposes of investigation of an unlicensed assistive person and any board action that may result.

History: Effective December 1, 1995; amended effective June 1, 2002.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14